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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re: ) Case No. 05-22777-D-7  
)  
MELANIE HUGHES, )  
)  
Debtor. )

CLAYEO C. ARNOLD and CLAYEO ) Adv. Pro. No. 05-2225-D  
ARNOLD, PROFESSIONAL LAW )  
CORPORATION, ) DC Nos. ARP-4, ARP-6  
)  
Plaintiffs, ) Date: February 27, 2008  
v. ) Time: 10:00 a.m.  
MELANIE HUGHES, ) Dept: D  
Defendant. )

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION

On October 3, 2007, Clayeo C. Arnold and Clayeo Arnold, Professional Law Corporation ("Plaintiffs") filed a Motion for Relief from the Automatic Stay, bearing Docket Control No. ARP-5 ("the Motion"). The Motion was filed in the above-captioned parent bankruptcy case, Case No. 05-22777-D-7. On November 14, 2007, Melanie Hughes ("Defendant"), as the debtor in the bankruptcy case, filed opposition to the Motion ("the Opposition"). For the reasons set forth below, the court will

1 deny the Motion as moot, and will do so by way of an order in the  
2 parent bankruptcy case. In addition, the court will construe the  
3 Opposition as a counter-motion for certification of a final  
4 judgment in Arnold v. Hughes, Adversary Proceeding No. 05-2225-D  
5 ("the adversary proceeding"), and will grant the counter-motion.<sup>1</sup>

6 I. INTRODUCTION

7 On March 14, 2005, the Defendant filed a petition for relief  
8 under chapter 7 of the Bankruptcy Code, thereby commencing this  
9 bankruptcy case. On June 14, 2005, the Plaintiffs filed a  
10 Complaint to Determine Dischargeability of Debts and for Denial  
11 of Discharge, thereby commencing the adversary proceeding. The  
12 factual background of this matter is set forth generally in the  
13 court's memorandum decision on the Plaintiffs' motion for summary  
14 judgment in the adversary proceeding, filed August 24, 2007, and  
15 will not be repeated here. As in that decision, references  
16 herein to the state court action will be to Rieger v. Arnold, et  
17 al., Sacramento County Superior Court Case No. 97AS03390, and  
18 "the attorney's fee award" will refer to the state court's award  
19 of attorney's fees and costs in favor of the Plaintiffs and  
20 against the Defendant.

21 On October 3, 2007, the Plaintiffs filed the Motion,  
22 together with a declaration of Clayeo Arnold, and as required by  
23 Local Bankruptcy Rule 4001-1(c), a Relief from Stay Information  
24 Sheet. On November 14, 2007, the Defendant filed the Opposition,

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25  
26 1. As the Motion was filed in the parent case, and the  
27 Defendant seeks certification of a final judgment in the related  
28 adversary proceeding, this memorandum will be filed under Docket  
Control No. ARP-5 in the parent case and under Docket Control Nos.  
ARP-4 and ARP-6 in the adversary proceeding.

1 together with exhibits and her declaration. On November 21,  
2 2007, the Plaintiffs filed a reply to the Opposition. On January  
3 22, 2008, the Defendant filed a supplemental opposition to the  
4 Motion. The Motion was argued on February 13, 2008, Amelia  
5 Pritchard appearing for the Plaintiffs, and the Defendant  
6 appearing on her own behalf. The court continued the hearing for  
7 further briefing, and the parties filed supplemental briefs on  
8 February 19, 2008.

9 On February 27, 2008, the Motion came on for final hearing,  
10 Amelia Pritchard appearing for the Plaintiffs, and the Defendant  
11 appearing on her own behalf. The court advised the parties of  
12 its tentative decision to certify a final judgment in the  
13 adversary proceeding, as discussed below, and heard additional  
14 remarks from both parties.

15 In the Motion, the Plaintiffs seek an order determining that  
16 the automatic stay of 11 U.S.C. § 362(a) was lifted upon entry of  
17 this court's August 24, 2007 order granting the Plaintiffs'  
18 motion for partial summary judgment in the adversary proceeding  
19 ("the Partial Summary Judgment Order"), or alternatively, lifting  
20 the stay to permit them to exercise their rights under applicable  
21 state law.

22 The Defendant responds that no judgment of nondischarge-  
23 ability has been entered, and that the Plaintiffs have failed to  
24 establish that either claim preclusion or issue preclusion  
25 applies to the issue of nondischargeability, for purposes of the

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27 / / /

28 / / /

1 Motion.<sup>2</sup> The court construes the Opposition as a counter-motion  
2 for certification of a judgment under Federal Rule of Civil  
3 Procedure 54(b) ("Rule 54(b)"), made applicable to the Motion and  
4 in the adversary proceeding by Federal Rules of Bankruptcy  
5 Procedure 9014(c) and 7054(a). The court notes that a court may  
6 also issue a Rule 54(b) certification sua sponte. 10 MOORE'S  
7 FEDERAL PRACTICE, § 54.21[1][a] (Matthew Bender 3d ed.)  
8 ("MOORE'S").

## 9 II. ANALYSIS

10 This court has jurisdiction over the Motion pursuant to 28  
11 U.S.C. §§ 1334 and 157(b)(1). The Motion is a core proceeding  
12 under 28 U.S.C. § 157(b)(2)(G) and (i).

### 13 A. Procedural Background

14 A brief history of the adversary proceeding is necessary.  
15 As indicated above, the Plaintiffs filed their complaint on June  
16 14, 2005. In their first two causes of action, the Plaintiffs  
17 sought a determination that the attorney's fee award is  
18 nondischargeable under 11 U.S.C. § 523(a)(6) as a willful and  
19 malicious injury. In their third and fourth causes of action,  
20 the Plaintiffs sought to deny the Defendant's discharge, pursuant  
21 to 11 U.S.C. § 727(a), for failure to keep adequate records and  
22 for concealing property with the intent to hinder, delay, or  
23 defraud creditors.

24 The Defendant answered the complaint on September 9, 2005.

25 / / /

26 \_\_\_\_\_  
27 2. The Defendant also argued that this court had no juris-  
28 diction to resolve the Motion, due to her then pending district  
court appeal. That issue has now been resolved by the district  
court's dismissal of the appeal, which is further discussed below.

1 On May 22, 2007, the parties filed cross-motions for summary  
2 judgment. The Plaintiffs' motion was actually a motion for  
3 partial summary judgment, because it pertained only to the causes  
4 of action to determine the attorney's fee award to be  
5 nondischargeable under § 523(a)(6), and did not address the § 727  
6 causes of action. Following briefing and oral argument, the  
7 court denied the Defendant's motion for summary judgment, and  
8 granted the Plaintiffs' motion in part. Specifically, the court  
9 granted the motion to the extent that it sought to determine the  
10 attorney's fee award to be nondischargeable.<sup>3</sup>

11 Thus, on August 24, 2007, by way of the Partial Summary  
12 Judgment Order, the attorney's fee award was declared  
13 nondischargeable. The court deferred a determination of the  
14 amounts due under the attorney's fee award pending a subsequent  
15 motion.

16 On September 4, 2007, the Defendant filed a Notice of Appeal  
17 from the Partial Summary Judgment Order and a statement of  
18 election to have the appeal heard by the district court.

19 In the absence of a Rule 54(b) certification,

20 any order or other decision, however designated, that  
21 adjudicates fewer than all the claims or the rights and  
22 liabilities of fewer than all the parties does not end  
23 the action as to any of the claims or parties and may  
be revised at any time before the entry of a judgment  
adjudicating all the claims or all the parties' rights  
and liabilities.

24 Fed. R. Civ. P. 54(b).

25 Thus, the Partial Summary Judgment Order, because it did not  
26 address the Plaintiffs' § 727(a) causes of action, adjudicated

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27  
28 3. The court denied that portion of the motion seeking a  
determination of nondischargeability as to other alleged debts.

1 fewer than all the claims in the adversary proceeding, and was  
2 therefore not final. As a result, the district court granted the  
3 Plaintiffs' motion to dismiss the Defendant's appeal.<sup>4</sup>

4 In the meantime, on October 3, 2007, the Plaintiffs had  
5 filed a motion in the adversary proceeding to determine the  
6 amounts owed by the Defendant on the nondischargeable attorney's  
7 fee award. The motion was briefed and argued, and the court  
8 stated its findings and conclusions on the record at a hearing on  
9 February 13, 2008. The court issued a minute order on February  
10 19, 2008 ("Order Determining Amounts"), determining that the  
11 amounts owed on the award were \$122,702.37 to Clayeo C. Arnold  
12 and \$190,237.01 to Clayeo Arnold, Professional Law Corporation.

13 B. Rule 54(b) Certification

14 In the Motion, the Plaintiffs complain that they have been  
15 unable to collect on the attorney's fee award. They "wish to  
16 execute on Debtor's post petition wages," and argue that "the  
17 court's order of August 24, 2007 [the Partial Summary Judgment  
18 Order] operates as a de facto lift of the automatic stay."<sup>5</sup> The  
19 Defendant argues in response that the Partial Summary Judgment  
20 Order "is just that, an order. It is not a final judgment."<sup>6</sup>  
21 The Defendant is correct.

22 In effect, both parties want finality to the order; the  
23 Plaintiffs so they can execute, and the Defendant so she can

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24  
25 4. Order Granting Appellees' Motion to Dismiss Appeal, filed  
26 January 30, 2008, Hughes v. Arnold, Case No. CV 07-01841 LEW, U.S.  
District Court for the Eastern District of California.

27 5. The Motion, 4:1-3.

28 6. The Opposition, 8:27-9:1.

1 appeal. The goal of finality can be accomplished by  
2 certification pursuant to Rule 54(b), which provides:

3 When an action presents more than one claim for relief  
4 -- whether as a claim, counterclaim, crossclaim, or  
5 third-party claim -- or when multiple parties are  
6 involved, the court may direct entry of a final  
judgment as to one or more, but fewer than all, claims  
or parties only if the court expressly determines that  
there is no just reason for delay.

7 Fed. R. Civ. P. 54(b).

8 The court is required to make an express determination that  
9 there is no just reason for delay and to expressly direct the  
10 entry of judgment. MOORE'S, § 54.21[3]. The court is to make  
11 the determination in light of the policy of "prevent[ing]  
12 piecemeal appeals in cases which should be reviewed only as  
13 single units." Id., quoting Curtiss-Wright Corp. v. General  
14 Electric Co., 446 U.S. 1, 10 (1980). Further, an order may not  
15 be certified under Rule 54(b) unless it finally disposes of the  
16 claims adjudicated in the order. MOORE'S, § 54.22[2][a].

17 Taking these requirements in reverse order, the court finds  
18 that the Partial Summary Judgment Order, as supplemented by the  
19 Order Determining Amounts, completely disposes of the first and  
20 second causes of action of the Plaintiffs' complaint. Nothing  
21 remains to be adjudicated in connection with those causes of  
22 action.

23 Next, certifying the Partial Summary Judgment Order as final  
24 will not offend the policy of preventing piecemeal appeals,  
25 because the causes of action adjudicated in the order, the  
26 Plaintiffs' first and second causes of action, are factually and  
27 legally distinct from their third and fourth causes of action.  
28 The first and second causes of action depend on facts that are

1 starkly different from those alleged in the third and fourth  
2 causes of action. The first and second causes of action seek a  
3 different form of relief -- a determination that specific debts  
4 are not dischargeable -- from the relief sought in the third and  
5 fourth causes of action -- denial of the Defendant's discharge as  
6 a whole. The grounds for the different forms of relief are  
7 separate and distinct from each other. As a result, there is no  
8 possibility of duplicative appellate review. In other words, "no  
9 appellate court would have to decide the same issues more than  
10 once even if there were subsequent appeals." See Curtiss-Wright  
11 Corp., 446 U.S. at 8.

12 Finally, the court finds no just reason for delay in  
13 entering a final judgment on the Partial Summary Judgment Order.  
14 In making this determination, the court is to consider whether a  
15 Rule 54(b) certification "will alleviate some hardship or  
16 injustice that would result from the delay in the entry of  
17 judgment." MOORE'S, § 54.23[1][b]. In this case, the court  
18 finds that delaying entry of judgment would unfairly delay the  
19 Plaintiffs' ability to recover on their claims against the  
20 Defendant, and would unfairly delay the Defendant's right to  
21 appellate review.

22 Accordingly, the court finds that there is no just reason  
23 for delay, and directs the entry of a judgment on the Partial  
24 Summary Judgment Order, as supplemented by the Order Determining  
25 Amounts.

26 C. The Motion for Relief from Stay

27 Upon entry of a final appealable judgment on the Partial  
28 Summary Judgment Order, as supplemented by the Order Determining



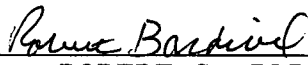
1 Amounts, the automatic stay will no longer operate to preclude  
2 execution on that judgment. "[T]he automatic stay provisions of  
3 Section 362 do not preclude the execution of a judgment, which  
4 has been held by the bankruptcy court to be non-dischargeable,  
5 upon property of the debtor which is not property of the estate."  
6 Watson v. City Nat'l Bank (In re Watson), 78 B.R. 232, 235 (9th  
7 Cir. BAP 1987); see also Arneson v. Farmers Ins. Exch. (In re  
8 Arneson), 282 B.R. 883, 892 (9th Cir. BAP 2002); Palm v.  
9 Klapperman (In re Cady), 266 B.R. 172, 180 (9th Cir. BAP 2001).  
10 The creditor does not need to seek relief from the stay.

11 The Plaintiffs have not indicated in their Motion any  
12 intention to seek to enforce the judgment against property of the  
13 Defendant's bankruptcy estate. Instead, they intend to pursue  
14 only property of the Defendant that is not property of the  
15 estate. Thus, pursuant to Watson and Cady, the Motion will be  
16 denied as moot, by separate order filed in the parent case.

17 III. CONCLUSION

18 For the reasons set forth above, the court will issue an  
19 order in the bankruptcy case denying the Motion as moot, will  
20 issue an order in the adversary proceeding granting the  
21 Defendant's counter-motion for certification of a final judgment,  
22 and will enter in the adversary proceeding a judgment on the  
23 Partial Summary Judgment Order, as supplemented by the Order  
24 Determining Amounts.

25  
26 Dated: March 3, 2008

  
\_\_\_\_\_  
ROBERT S. BARDWIL  
United States Bankruptcy Judge

Certificate of Service

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a true copy of the attached document was mailed today to the following entities listed at the address(es) shown below:

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FOR THE COURT  
RICHARD G. HELTZEL  
CLERK, U.S. BANKRUPTCY COURT

By:   
Deputy Clerk